



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/726,963

12/03/2003

David Ernest Hartley

PA-5351-RFB

4386

9896 7590 07/21/2008

COOK GROUP PATENT OFFICE

P.O. BOX 2269

BLOOMINGTON, IN 47402

EXAMINER

SEVERSON, RYAN J

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

07/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/726,963</p>	<p>Applicant(s) HARTLEY ET AL.</p>	
	<p>Examiner Ryan Severson</p>	<p>Art Unit 3731</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,2,5-12 and 17-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant presents various arguments in response to the final rejection.

The first argument is that the claims are drawn to a prosthesis designed for the treatment, by intraluminal placement, of aortic dissection caused by rupture in the wall of an aorta. However, independent claims 1 and 17 only claim "a prosthesis" with no requirement that the prosthesis be used at the rupture of an aorta. Further, independent claim 10 only requires a prosthesis for treatment of an aortic dissection, but does not discuss the "rupture" aspect of the argument. Therefore, applicant's assertion is entirely false and by nature not persuasive.

Further, applicant argues section 23 of Brown is not a link. However, the definition of a link, taken from www.dictionary.com, is "anything serving to connect one thing to another" and in this regard, section 23 of Brown is in fact a link. Applicant has not provided in the specification a specific limiting definition of how the term "link" should be read or what structure is required by the term, and therefore the limitation is given its broadest reasonable interpretation. This interpretation has been applied in view of the Brown patent.

Applicant further argues that item 22 of Brown is balloon expandable and not self expanding. However, Brown discloses that the portions of the stent can be self expanding (for example, see column 5, lines 30-39), and therefore no teaching is needed to meet the limitations of the claims because Brown discloses the structure can be self expanding.

Applicant further argues the entire length of the graft is not stented. However, this structure is not claimed at any point, and therefore the argument is not persuasive.

Applicant also argues item 22b is not a stent but merely one end of a stent. However, given the broadest reasonable interpretation, the Brown structure as shown in figure 4c can be interpreted to have 6 stents connected to one another. Therefore, this argument is also not persuasive.

Finally, applicant argues that the links 23 of Brown are not flexible. However, if any structure can be bent or curved (in other words, flexed) then the device is flexible. The term flexible is a relative term and there is no specific definition or differentiation between the terms flexible and rigid, as applicant asserts.

Therefore, in view of the comments above and in the previous actions, the rejections are maintained and all arguments deemed not persuasive.